

District of Columbia, or any Federal court, must notify the EOIR disciplinary counsel of any such conviction or disciplinary action within 30 days of the issuance of the initial order, even if an appeal of the conviction or discipline is pending. Failure to do so may result in immediate suspension as set forth in paragraph (a) of this section and other final discipline. This duty to notify applies only to convictions for serious crimes and to orders imposing discipline for professional misconduct entered on or after August 28, 2000.

[65 FR 39526, June 27, 2000, as amended at 73 FR 76923, Dec. 18, 2008; 77 FR 2014, Jan. 13, 2012]

§ 1003.104 Filing of complaints; preliminary inquiries; resolutions; referral of complaints.

(a) *Filing complaints*—(1) *Practitioners authorized to practice before the Board and the Immigration Courts.* Complaints of criminal, unethical, or unprofessional conduct, or of frivolous behavior by a practitioner who is authorized to practice before the Board and the Immigration Courts shall be filed with the EOIR disciplinary counsel. Disciplinary complaints must be submitted in writing and must state in detail the information that supports the basis for the complaint, including, but not limited to, the names and addresses of the complainant and the practitioner, the date(s) of the conduct or behavior, the nature of the conduct or behavior, the individuals involved, the harm or damages sustained by the complainant, and any other relevant information. Any individual may file a complaint with the EOIR disciplinary counsel using the Form EOIR-44. The EOIR disciplinary counsel shall notify DHS of any disciplinary complaint that pertains, in whole or part, to a matter before DHS.

(2) *Practitioners authorized to practice before DHS.* Complaints of criminal, unethical, or unprofessional conduct, or frivolous behavior by a practitioner who is authorized to practice before DHS shall be filed with DHS pursuant to the procedures set forth in § 292.3(d) of this chapter.

(b) *Preliminary inquiry.* Upon receipt of a disciplinary complaint or on its own initiative, the EOIR disciplinary

counsel will initiate a preliminary inquiry. If a complaint is filed by a client or former client, the complainant thereby waives the attorney-client privilege and any other applicable privilege, to the extent necessary to conduct a preliminary inquiry and any subsequent proceedings based thereon. If the EOIR disciplinary counsel determines that a complaint is without merit, no further action will be taken. The EOIR disciplinary counsel may, in its discretion, close a preliminary inquiry if the complainant fails to comply with reasonable requests for assistance, information, or documentation. The complainant and the practitioner shall be notified of any such determination in writing.

(c) *Resolution reached prior to the issuance of a Notice of Intent to Discipline.* The EOIR disciplinary counsel, in its discretion, may issue warning letters and admonitions, and may enter into agreements in lieu of discipline, prior to the issuance of a Notice of Intent to Discipline.

(d) *Referral of complaints of criminal conduct.* If the EOIR disciplinary counsel receives credible information or allegations that a practitioner has engaged in criminal conduct, the EOIR disciplinary counsel shall refer the matter to DHS or the appropriate United States Attorney and, if appropriate, to the Inspector General, the Federal Bureau of Investigation, or other law enforcement agency. In such cases, in making the decision to pursue disciplinary sanctions, the EOIR disciplinary counsel shall coordinate in advance with the appropriate investigative and prosecutorial authorities within the Department to ensure that neither the disciplinary process nor criminal prosecutions are jeopardized.

[65 FR 39526, June 27, 2000, as amended at 73 FR 76924, Dec. 18, 2008]

§ 1003.105 Notice of Intent to Discipline.

(a) *Issuance of Notice to practitioner.* (1) If, upon completion of the preliminary inquiry, the EOIR disciplinary counsel determines that sufficient prima facie evidence exists to warrant charging a practitioner with professional misconduct as set forth in § 1003.102, he or she will file with the

Board and issue to the practitioner who was the subject of the preliminary inquiry a Notice of Intent to Discipline. Service of this notice will be made upon the practitioner by either certified mail to his or her last known address, as defined in paragraph (a)(2) of this section, or by personal delivery. Such notice shall contain a statement of the charge(s), a copy of the preliminary inquiry report, the proposed disciplinary sanctions to be imposed, the procedure for filing an answer or requesting a hearing, and the mailing address and telephone number of the Board. In summary disciplinary proceedings brought pursuant to § 1003.103(b), a preliminary inquiry report is not required to be filed with the Notice of Intent to Discipline.

(2) For the purposes of this section, the last known address of a practitioner is the practitioner's address as it appears in EOIR's case management system if the practitioner is actively representing a party before EOIR on the date that the EOIR disciplinary counsel issues the Notice of Intent to Discipline. If the practitioner does not have a matter pending before EOIR on the date of the issuance of a Notice of Intent to Discipline, then the last known address for a practitioner will be as follows:

(i) Attorneys in the United States: the attorney's address that is on record with a state jurisdiction that licensed the attorney to practice law.

(ii) Accredited representatives: the address of a recognized organization with which the accredited representative is affiliated.

(iii) Accredited officials: the address of the embassy of the foreign government that employs the accredited official.

(iv) All other practitioners: the address for the practitioner that appears in EOIR's case management system for the most recent matter on which the practitioner represented a party.

(3) *DHS Issuance of Notice to practitioner.* DHS may file a Notice of Intent to Discipline with the Board in accordance with 8 CFR 292.3(e).

(b) *Copy of notice; reciprocity of discipline.* A copy of the Notice of Intent to Discipline filed by the EOIR disciplinary counsel shall be forwarded to

DHS, which may submit a written request to the Board or the adjudicating official requesting that any discipline imposed upon a practitioner which restricts his or her authority to practice before the Board and the Immigration Courts also apply to the practitioner's authority to practice before DHS. A copy of the Notice of Intent to Discipline filed by DHS shall be forwarded to the EOIR disciplinary counsel, who may submit a written request to the Board or the adjudicating official requesting that any discipline imposed upon a practitioner that restricts his or her authority to practice before DHS also apply to the practitioner's authority to practice before the Board and the Immigration Courts. Proof of service on the practitioner of any request to broaden the scope of the proposed discipline must be filed with the adjudicating official.

(c) *Answer—(1) Filing.* The practitioner shall file a written answer to the Notice of Intent to Discipline with the Board within 30 days of the date of service of the Notice of Intent to Discipline unless, on motion to the Board, an extension of time to answer is granted for good cause. A motion for an extension of time to answer must be received by the Board no later than three (3) working days before the time to answer has expired. A copy of the answer and any such motion shall be served by the practitioner on the counsel for the government.

(2) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense and shall specifically admit or deny each allegation set forth in the Notice of Intent to Discipline. Every allegation in the Notice of Intent to Discipline which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need be adduced. The practitioner may also state affirmatively special matters of defense and may submit supporting documents, including affidavits or statements, along with the answer.

(3) *Request for hearing.* The practitioner shall also state in the answer whether he or she requests a hearing on the matter. If no such request is

made, the opportunity for a hearing will be deemed waived.

(d) *Failure to file an answer.* (1) Failure to file an answer within the time period prescribed in the Notice of Intent to Discipline, except where the time to answer is extended by the Board, shall constitute an admission of the allegations in the Notice of Intent to Discipline and no further evidence with respect to such allegations need be adduced.

(2) Upon such a default by the practitioner, the counsel for the government shall submit to the Board proof of service of the Notice of Intent to Discipline. The practitioner shall be precluded thereafter from requesting a hearing on the matter. The Board shall issue a final order adopting the proposed disciplinary sanctions in the Notice of Intent to Discipline unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted or not in the interests of justice. With the exception of cases in which the Board has already imposed an immediate suspension pursuant to § 1003.103, any final order imposing discipline shall not become effective sooner than 15 days from the date of the order to provide the practitioner opportunity to comply with the terms of such order, including, but not limited to, withdrawing from any pending immigration matters and notifying immigration clients of the imposition of any sanction. A practitioner may file a motion to set aside a final order of discipline issued pursuant to this paragraph, with service of such motion on counsel for the government, provided:

(i) Such a motion is filed within 15 days of the date of service of the final order; and

(ii) His or her failure to file an answer was due to exceptional circumstances (such as serious illness of the practitioner or death of an immediate relative of the practitioner, but not including less compelling circumstances) beyond the control of the practitioner.

[65 FR 39526, June 27, 2000, as amended at 73 FR 76925, Dec. 18, 2008; 77 FR 2014, Jan. 13, 2012]

§ 1003.106 Right to be heard and disposition.

(a) *Right to be heard*—(1) *Summary disciplinary proceedings.* A practitioner who is subject to summary disciplinary proceedings pursuant to § 1003.103(b) must make a prima facie showing to the Board in his or her answer that there is a material issue of fact in dispute with regard to the basis for summary disciplinary proceedings, or with one or more of the exceptions set forth in § 1003.103(b)(2)(i) through (iii). If the practitioner files a timely answer and the Board determines that there is a material issue of fact in dispute with regard to the basis for summary disciplinary proceedings, or with one or more of the exceptions set forth in § 1003.103(b)(2)(i) through (iii), then the Board shall refer the case to the Chief Immigration Judge for the appointment of an adjudicating official. If the practitioner fails to make such a prima facie showing, the Board shall retain jurisdiction over the case and issue a final order. Notwithstanding the foregoing, the Board shall refer any case to the Chief Immigration Judge for the appointment of an adjudicating official in which the practitioner has filed a timely answer and the case involves a charge or charges that cannot be adjudicated under the summary disciplinary proceedings provisions in § 1003.103(b). The Board shall refer such a case regardless of whether the practitioner has requested a hearing.

(2) *Procedure.* The procedures of paragraphs (b) through (d) of this section apply to cases in which the practitioner files a timely answer to the Notice of Intent to Discipline, with the exception of cases in which the Board issues a final order pursuant to § 1003.105(d)(2) or § 1003.106(a)(1).

(i) The Chief Immigration Judge shall, upon the filing of an answer, appoint an Immigration Judge as an adjudicating official. At the request of the Chief Immigration Judge or in the interest of efficiency, the Director of EOIR may appoint an Administrative Law Judge as an adjudicating official. An Immigration Judge or Administrative Law Judge shall not serve as the adjudicating official in any case in which he or she is also the complainant. An Immigration Judge shall not